Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-913

In the Matter of the Complaint of

SEABOARD SHIPPING CORPORATION, as owner of the Barge Oil Transfer 32,

Petitioner,

for exoneration from or limitation of liability.

MORAN INLAND WATERWAYS CORPORATION and MORAN TOWING AND TRANSPORTATION CO., INC., Claimants,

Respondents.

In the Matter of the Complaint of

MORAN INLAND WATERWAYS CORPORATION, as owner, and MORAN TOWING & TRANSPORTATION CO., INC., as chartered owner of Tug Margot Moran,

Respondents,

for exoneration from or limitation of liability.

SEABOARD SHIPPING CORPORATION, Claimant,

Petitioner.

BRIEF FOR RESPONDENTS

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This Court did not hold in *Halcyon,* as petitioner says it did (p. 5), "that it would not allow contribution for Maritime personal injury damages other than in collision cases". All it said was that it "has never expressly applied it to non-collision cases". 342 U.S. at 284. The parties there were a shipowner and a shoreside contractor

and the latter could not be a tort feasor in respect of the injured man because its only duty to him was to pay compensation under the statute.

If Moran is to be held liable for the deaths, this case affords an opportunity for this Court to settle the question whether there is contribution between joint tort feasors in non-collision cases for damages for injury and death because neither Moran nor Seaboard (the decedents' employer) had the immunity to liability for negligent injury afforded by compensation.

There is definitely conflict on this question. In this case the Court of Appeals, Second Circuit, allowed contribution between joint tort feasors in a non-collision case although the same court had denied contribution in such a situation in *Benazet* v. *Atlantic Coastline Railroad Co.*, 442 F. 2d 694 (1971), cert. granted *sub nom. Atlantic Coast Line R.R. Co.* v. *Erie Lackawanna R.R. Co.*, No. 71-107, October 26, 1971; and in *McLaughlin* v. *Trelleborg's Angfartygs A/B*, 408 F. 2d 1334, cert. denied 395 U.S. 946 (1969).

On the other hand, the Fifth Circuit has twice decreed contribution in such cases. *Horton & Horton Inc.* v. *T/S J. E. Dyer*, 428 F. 2d 1131, cert. denied 400 U.S. 993; *Watz* v. *Zapata Off-Shore Company*, 431 F. 2d 100.

Moreover, this Court itself has allowed contribution in a non-collision case. *White Oak Co.* v. *Boston Canal Co.*, 258 U.S. 341 (1922).

Again, petitioner invokes (pp. 6-7) the conflict as to indemnity represented by the warranty of workmanlike service cases. In this case both courts below refused to recognize such a warranty—the District Court, petitioner's Appendix B, p. 34, ftn. and the Court of Appeals *sub*

silentio. Nevertheless, this theory which we call "wows" has on occasion been applied as petitioner says (pp. 7-8) in tug and tow cases, contrary to a long line of decisions such as *Stevens* v. *The White City*, 285 U.S. 195, 201 (1932); *The John G. Stevens*, 170 U.S. 113, 123-6 (1897); *The J. P. Donaldson*, 167 U.S. 599, 603 (1897); *The Margaret*, 94 U.S. 494, 497 (1876); and *The Steamer Webb*, 14 Wall. 406, 414 (1871), all holding the tug liable only for proven negligence.

This case affords an excellent opportunity to put an end to uncertainty in this area, to get back to sound and long-established doctrine and to relieve the industry of the doubts and fears of uncertainty in making towage contracts and insuring against the incidental risks.

Although we believe that petitioner's points are without merit, in the interest of clarifying the law and thereby minimizing litigation, Moran does not oppose Seaboard's petition.

Contemporaneously herewith Moran is filing its own petition for certiorari to review the Court of Appeals' decision which reversed the District Court and held Moran liable.

Respectfully submitted,

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January 31, 1972